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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,294	12/12/2003	Raymond C. Kurzweil	14202-002001	9946

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EXAMINER	
SAADAT, CAMERON	
ART UNIT	PAPER NUMBER
3715	

NOTIFICATION DATE	DELIVERY MODE
01/08/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

Office Action Summary	Application No.	Applicant(s)	
	10/735,294	KURZWEIL, RAYMOND C.	
	Examiner	Art Unit	
	CAMERON SAADAT	3715	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10/26/2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-23* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-23* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *26 May 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/26/2009 has been entered. Claims 1-20 and newly added claims 21-23 are pending.

Double Patenting

This holding, incorporated herein, is maintained from the prior action for the cited claims as amended. Response to the applicant's remarks are provided below and incorporated herein.

Claims 1-20 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-23 of Application No. 10/735,595, claims 1-26 of Application No. 10/734,618, claims 1-21 of Application No. 10/734,616, and claims 1-20 of Application No. 10/734,617. Although the conflicting claims are not identical, they are not patentably distinct from each other because each application contains substantially similar subject matter with obvious variations of claimed subject matter.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined

application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-4, 7-10, 13-17, and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abbasi (USPN 6,786,863) in view of Choy et al. (USPN 6,695,770; hereinafter Choy), further in view of Piccionelli (US 7,124,186).

This holding, incorporated herein, is maintained from the prior action for the cited claims as amended. Response to the applicant's remarks are provided below and incorporated herein.

Regarding claims 1, 9, and 15 Abbasi discloses a virtual encounter system and method comprising, a mannequin having life-like features, the mannequin further comprising: a simulated human body part 55; a camera 35a-b coupled to the body for sending video signals to a communications network 30; and a microphone 40a-b coupled to the/ body for sending audio signals over the communications network; a display to render the video signals received from the camera and a transducer to transduce the audio signals received from the microphone (See Col. 2, lines 54-67). Abbasi discloses all of the claimed subject matter with the exception of explicitly disclosing the feature of providing a video display in the form of goggles. However, it is the examiner's position that providing a head mounted display is old and well known in a virtual reality environment. In addition, Choy teaches a virtual reality system wherein users are provided with their own headsets for displaying images and sound (See Choy, Col. 3, lines 1-6, lines 41-45; Fig 1, headset output) to provide images of a person with whom the user wishes to fantasize. In view of Choy, it would have been obvious to one of ordinary skill in the art to modify the display

described in Abbasi, by providing a head mounted display/goggles in order to enhance the reality of a virtual environment by allowing a user to fantasize about a person displayed in the headset display.

The combination of Abbasi and Choy discloses all of the claimed subject matter with the exception of explicitly disclosing that the video and audio signals reflect the mannequin's surrounding views and sound in real-time. The examiner agrees with applicant that the audio and video signals described in Choy are retrieved from a database. However, Piccionelli teaches a method of providing live performances over a network, wherein the performance is a virtual sex service (see Col. 5, line 62 – Col. 6, line 2); wherein the performance is provided from a room with video conferencing or other means of transmission of visual, auditory, audiovisual, tactile, smell, and other sensory information. See Piccionelli, col. 5, lines 30-50. Therefore, It would have been obvious to one of ordinary skill in the art to modify the audio/video virtual sex environment described in Abbasi and Choy, by providing teleconferencing to provide surrounding views and thereby deliver a live performances in real-time in response to a user's request. See Piccionelli, Col. 2, lines 35-47.

Regarding claims 2 and 16, Abbasi discloses a system wherein the mannequin is at a first location with the camera being a first camera and the microphone being a first microphone and the display being the first display, the system further comprising: a second mannequin in the second different location, the second mannequin having a second microphone and a second camera; and a second display to receive the video signals from the first camera and a second earphone to receive the audio signals from the first microphone (See Col. 4, lines 37-47; Fig. 1).

Regarding claims 3 and 17, Abbasi discloses a system wherein the communications network comprises: a first communication gateway in the first location; and a second communication gateway in the second location, the second processor connected to the first processor via a network (See Col. 3, lines 6-8).

Regarding claim 4, Abbasi discloses a system wherein the communications network comprises an interface having one or more channels for: receiving the audio signals from the microphone; receiving the video signals from the camera; sending the audio signals to the display; and sending the audio signals to the transducer (See Col. 4, lines 37-47; Fig 1).

Regarding claims 7 and 13, Abbasi discloses a system wherein the display comprises a receiver to receive the video signals (See Col. 2, lines 54-67).

Regarding claims 8 and 14, Abbasi does not explicitly disclose the feature of providing a transmitter to wirelessly send the audio signals and the video signals to the communications network from the mannequin. However, Choy teaches a virtual reality system comprising a mannequin, wherein data is wirelessly transmitted from the mannequin to a communications network (See Col. 9, lines 5-15). /Thus, in view of Choy, it would have been obvious to one of ordinary skill in the art to modify the transmission of data described in Abbasi, by providing a wireless transmission of data with the mannequin, in order to provide a more realistic untethered mannequin.

Regarding claim 10, Abbasi discloses a method further comprising: sending audio signals to the communications network from a second microphone coupled to a second mannequin having life-like features; sending video signals to the communications network from a second camera coupled to the second mannequin; rendering the video signals received from the communications network onto a monitor coupled to a second display; and transducing the audio signals received from the communications network using a second transducer of a second display (See Col. 2, lines 54-67; Col. 4, lines 37-47; Fig 1).

Regarding claims 21-23, Abbasi does not explicitly disclose the feature of modifying one or more characteristics of audio signals from a microphone and sending the modified audio signal over a communication network. Abbasi discloses the capability to receive audio information from a microphone attached to the first computing device, wherein the audio is then conveyed to a

second computing device where it is routed to a speaker system or audio output unit. See Col. 2, lines 63-67. It is not explicitly disclosed that the audio signal from the microphone is modified. However, the examiner takes official notice that the feature of modifying audio signals that are captured via microphone is notoriously old and well known. For example, once an analog signal (voice) is captured by the microphone, it would be obvious to one of ordinary skill to modify the analog signal by digitizing and/or compressing the signal in order to store or transmit the data.

Claims 5-6, 11-12, and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abbasi (USPN 6,786,863) in view of Choy et al. (USPN 6,695,770; hereinafter Choy), Piccionelli , and further in view of Gutierrez (USPN 5,111,290).

This holding, incorporated herein, is maintained from the prior action for the cited claims as amended. Response to the applicant's remarks are provided below and incorporated herein.

The combination of Abbasi, Choy, and Piccionelli discloses all of the claimed subject matter with the exception of explicitly disclosing the feature of (as per claims 5, 11,18, 20) positioning the camera in the eye socket of the body; (as per claims 6, 12, 19, and 20) positioning the microphone in an ear canal of the simulated body. However, Gutierrez teaches a virtual mannequin comprising a video camera concealed in the eye socked of the mannequin (Col. 1, lines 57-65). In view of Gutierrez, it would have been obvious to one of ordinary skill in the art to modify the placement of the mannequin camera and microphone described in the combination of Abbasi and Choy, by concealing them within the mannequin and thereby avoiding the unattractive appearance of the camera and microphone.

Response to Arguments

Applicant's arguments filed 10/26/2009 have been fully considered but they are not persuasive. Applicant argues that Abbasi teaches away from using "a set of goggles including a display to render electrical signals representative of second video signals" which "at least partially reflect surrounding views…of a location different from a location of the mannequin…" Applicant supports this argument by stating that to perform kisses successfully as Abbasi describes, each user has to be able to locate his surrogate and to view the user interface for communication; therefore by using a set of goggles, the user would only be able to see the display of the goggles and not be able to see both his surrogate and the user interface. The examiner respectfully disagrees. First, Abbasi does not state that both the display and the surrogate must be visible to the user at all times, as suggested by applicant. Oppositely, one of ordinary skill in the art would find it obvious that combining a goggle display with Abbasi would only require that the user locate the surrogate prior to wearing the goggle display. In addition, Choy utilizes a set of goggles/headset while interfacing with a surrogate/sexual partner. Thus, it is not necessary to view the surrogate while wearing the headset. The concept is to have tactile contact with the surrogate while viewing the display. Additionally, in *W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984) (hereinafter "Gore")* the court held that a prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. In general, the holding in *Gore* suggests that a reference teaches away from a combination if the primary reference explicitly states that the elements of the secondary reference should not be employed. However, the instant case is distinguished from *Gore*. Here, the primary reference does not state that a headset display should not be employed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CAMERON SAADAT whose telephone number is (571)272-4443. The examiner can normally be reached on M-F 9:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan M. Thai can be reached on (571) 272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Cameron Saadat/
Primary Examiner, Art Unit 3715